

KDL's *Application* was made pursuant to, and was considered in light of, the criteria for granting a Certificate of Public Convenience and Necessity ("CCN") as set forth in Tenn. Code Ann. § 65-4-201, which provides, in pertinent part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

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(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

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(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.<sup>1</sup>

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<sup>1</sup> Notwithstanding the existence of subsection (d), the Federal Communications Commission ("FCC") has expressly preempted the Authority's enforcement of subsection (d) pursuant to the authority granted to the FCC under 47 U.S.C. § 253(d) *In the Matter of AVR, LP d/b/a Hyperion of Tennessee, LP Petition for Preemption of Tennessee Code Annotated Section 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Area*, FCC 99-100, (Memorandum Opinion and Order) 14 F.C.C.R. 11,064 (May 27, 1999), (Memorandum Opinion and Order) 16 F.C.C.R. 1247 (January 8, 2001) The Authority has since issued an order expanding a competing local exchange carrier's CCN to provide telecommunications services on a statewide basis including areas served by incumbent local exchange carriers with fewer than 100,000 total access lines in Tennessee. *See In re Application of Level 3 Communications, LLC to Expand its CCN to Provide Facilities-Based Local Exchange and Interexchange Telecommunications Services in all Tennessee Service Areas*, Docket No. 02-00230, *Order Approving Application of Level 3 Communications, LLC to Amend Its Certificate of Public Convenience and Necessity* (June 28, 2002).

Furthermore, pursuant to Tenn. Code Ann. § 65-5-212, a competing telecommunications provider is required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

### **The March 15, 2004 Hearing**

Pursuant to Tenn. Code Ann. § 65-4-204, public notice of the Hearing in this matter was issued by the Hearing Officer on March 1, 2004. No persons sought intervention prior to or during the Hearing. At the Hearing held on March 15, 2004, Anthony J. Candelario, Esq., Corporate Counsel for KDL, 8829 Bond Street, Overland Park, Kansas 66214, participated in the Hearing, presented testimony, and was subject to examination by the Hearing Officer. April A. Ingram, Esq., Boulton, Cummings, Connors, Berry, PLC, 414 Union Street, Suite 1600, P.O. Box 198062, Nashville, Tennessee 37219 appeared on behalf of KDL. Upon KDL's conclusion of the presentation of its proof, the Hearing Officer granted KDL's *Application* based upon the following findings of fact and conclusions of law:

#### **I. KDL's Qualifications**

1. KDL is a corporation originally organized under the laws of the State of Kentucky on April 13, 1990, and qualified to transact business in Tennessee under the assumed name Cinergy Networks on May 20, 1999.

2. The complete street address of KDL's registered agent is National Registered Agents, Inc., 1900 Church Street, Suite 400, Nashville, Tennessee 37203. The complete street address of KDL's corporate office is 8829 Bond Street, Overland Park, Kansas 66214. The telephone number is (913) 492-1230 and the facsimile number is (913) 492-1684.

3. The *Application* and supporting documentary information existing in the record indicate that KDL has the requisite technical and managerial ability to provide competing local exchange telecommunications services within the State of Tennessee. Specifically, KDL's senior management team possesses extensive business, technical, operational and regulatory telecommunications experience.

4. KDL has the necessary capital and financial ability to provide the services it proposes to offer.

5. KDL has represented that it will adhere to all applicable policies, rules and orders of the Authority.

## **II. Proposed Services**

KDL intends to provide competing resold and facilities-based local exchange telecommunications services, including exchange access telecommunications services, and resold long distance services within the State of Tennessee.<sup>2</sup>

## **III. Permitting Competition to Serve the Public Convenience and Necessity**

Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of KDL's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

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<sup>2</sup> In Docket No. 99-00408, by Order dated May 22, 2000, Kentucky Data Link, Inc. d/b/a Cnergy Networks was granted authority to resell interexchange telecommunications services in Tennessee.

**IV. Small and Minority-Owned Telecommunications Business Participation Plan and Business Assistance Program**

KDL has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules.

**V. Compliance with Tennessee's County-Wide Calling Requirements**

KDL has indicated its awareness of, and its obligation to comply with, the requirements of county-wide calling as set forth in Tenn. Code Ann. § 65-21-114.

**IT IS THEREFORE ORDERED THAT:**

1. The *Application for Certificate of Public Convenience and Necessity to Provide Competing Local Telecommunications Services* of Kentucky Data Link, Inc. d/b/a Cinergy Networks is approved; and
2. Any party aggrieved by the Hearing Officer's decision in this matter may file a petition for reconsideration within fifteen (15) days from and after the date of this Order.

  
Randal Gilliam, Hearing Officer